

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2016 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

DISTRICT MALARIA OFFICER

Versus

BIKHUBHAI CHAYA

Appearance:

1. Special Civil Application No. 2016 of 1992
MR KH BAXI for Petitioner No. 1
MR DM THAKKAR for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 15/01/2004

ORAL JUDGEMENT

Heard learned advocate Mr.K.H.Baxi on behalf of the petitioner and learned advocate Mr.D.M.Thakkar for respondent workman.

The present petition, the petitioner has challenged the award passed by the labour court, Bhavnagar in Reference No.901 / 1987 dated 10th October, 1988 wherein the labour court has passed the exparte award granting reinstatement with continuity of service and full backwages of the interim period. This award has been passed by the labour court in absence of the petitioner. The petitioner, thereafter, filed an application under Rule 26-A of the Industrial Disputes [Gujarat] Rules, 1966 in Misc. Application No.23 / 1989 for setting aside the exparte award passed by the labour court, Bhavnagar. However, said application has been rejected by the labour court, Bhavnagar on 21st December, 1991 and therefore, the present petition is filed before this Court.

Initially, this Court has issued Rule returnable on 16th April, 1992 and also granted ad-interim relief in terms of Para-5[c] vide order dated 23rd March, 1992. Subsequently, the ad-interim relief has been modified to the extent that no stay is granted against reinstatement but stay remained against grant of backwages. Thereafter, the earlier order also came to be modified by this Court because of the fact that in pursuance of the order, in all three offers made by the petitioner to the workman, but the workman had not reported for duty and therefore, this Court has modified to the extent that there is no need to comply with the order of reinstatement. This fact has been stated by the learned advocate Mr.Baxi on the basis of the letter of the District Malaria Officer, District Panchayat, Bhavnagar dated 23rd November, 1993.

Learned advocate Mr.Baxi submitted that the award has been passed by the labour court in absence of the petitioner and thereafter also, the application is also decided against the petitioner. Therefore, the petitioner was not having any opportunity to put forward the facts before the labour court concerned. He also submitted that in fact, the workman had not completed atleast one year continuous service but in statement of claim, it was stated by the workman that he had completed service for more than 20 years. Therefore, his contention is, it was not correct facts brought out and disclosed before the labour court by the workman and that is how, the exparte award has been passed by the labour court against the present petitioner.

As against this, the learned advocate Mr.Thakkar has submitted that during pendency of the proceedings,

the workman has expires on 12th February, 1996 and therefore, according to him, as such there is no possibility of remanding the matter back to the labour court for examining the merits after bipartite hearing. Therefore, learned advocate Mr.Thakkar submitted that some part of the backwages may be awarded in favour of the legal heirs of the deceased workman which would meet the ends of justice between the parties.

Learned advocate Mr.Baxi submitted that in fact, the workman had not completed twenty years of service but he was working on seasonal basis of spraying malaria related powder and therefore, to grant backwages that too, in absence of the correct facts on record, will unnecessarily loss to the petitioner which is public body. Therefore, he opposed the suggestion made by the learned advocate Mr.Thakkar.

I have considered submissions made by the learned advocates for the parties. I have considered the facts and circumstances of the case and the hard reality that the workman had passed away on 12th February, 1996. Before the labour court, Bhavnagar, though notice is served to the petitioner but no one remained present and that is how the exparte award came to be passed against the petitioner. This fact has been verified and discussed by the labour court, Bhavnagar in Misc. Application submitted by the petitioner. It can not be ignored to note that there was delay in filing the misc. application for a period of six months. These are the facts on record. Therefore, there was a fault on the part of the petitioner as there is some fault on the part of the workman not to give correct facts according to the petitioner. Ultimately, this Court has to consider that reinstatement is now not possible and therefore, the aspect which requires consideration that how much amount of backwages can be awarded in favour of the deceased workman to his legal heirs and representatives in absence of the deceased workman.

I have considered the matter from all angles. Therefore, without going into the merits of the matter, whether the workman is correct or the petitioner is correct but one fact is very clear that award of reinstatement with full backwages passed by the labour court, Bhavnagar is in favour of the workman and the same is still remained intact because the said misc. application for setting aside the exparte award, is also rejected. Therefore, considering all these facts, according to my opinion, the workman's termination was dated 15th July, 1987, the exparte award passed by the

labour court on 10th October, 1988 and misc. application was rejected on 21st December, 1991. Thereafter, efforts were made in pursuance of the order passed by this Court to the workman on 2nd July, 1993 but thereafter, the workman did not turn up. This fact has been narrated by the District Malaria Officer, District Panchayat, Bhavnagar in his letter dated 23rd November, 1993 addressed to the learned advocate Mr.Baxi. Therefore, considering the entire facts and circumstances of the case, according to my opinion, if some part of the backwages for the period from 15th July, 1987 to 30th June, 1993 is given to the legal heirs and representatives of the workman, would certainly meet the ends of justice between the parties.

I have also considered the fact the petitioner is the public body and keeping in mind the fact that in the year 1987 the daily wages rate was prevailing around Rs.16 per day, according to my opinion, if the petitioner is directed to pay 50 % backwages for the period from 15th July, 1987 to 30th June, 1993 to the legal heirs of the workman, would meet the ends of justice.

In view of aforesaid discussion, the present petition is partly allowed and Rule is made absolute accordingly. The petitioner is directed to pay 50 % backwages to the legal heirs and representative of the deceased workman viz. wife of the respondent workman if alive, for the period from 15th July, 1987 to 30th June, 1993 within period of two months from the date of receiving the copy of this order by account payee cheque. However, in case of any difficulty for making payment as per the directions of this Court, it would be open for the petitioner to move this Court by filing appropriate application before this Court.

It is made clear that from the date of award 10th October, 1988 onwards, till date if any amount has been paid to the respondent workman by the petitioner in pursuance of the award except benefits under Section 17-B of the I.D.Act, 1947, the same shall be adjusted by the petitioner, against the payment as directed above.

Date : 15.1.2004 [H.K.Rathod, J.]

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